Mate Creek Loading, Inc. ***and*** **Local Union 6105, United Mine Workers of America**, **AFL–CIO** ***and*** **International Union, United Mine Workers of America**, **AFL–CIO.** Cases 9–CA–36251–1 and 9–CA–36251–2

March 31, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS HURTGEN AND BRAME

Upon charges filed by Local 6105, United Mine Workers of America, AFL–CIO (Local 6105) in Case 9–CA–36251–1 on September 8, 1998, and by the International Union, United Mine Workers of America, AFL–CIO (the International Union or the Union) in Case 9–CA–36251–2 on September 17, 1998, the General Counsel of the National Labor Relations Board issued an order consolidating cases, consolidated complaint on November 10, 1998, against Mate Creek Loading, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charges and consolidated complaint, the Respondent failed to file an answer.

On March 3, 1999, the General Counsel filed a Motion for Summary Judgment with the Board. On March 5, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the consolidated complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the consolidated complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated February 11, 1999, notified the Respondent that unless an answer were received by February 22, 1999, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, has engaged in the operation of a coal preparation plant in Raleigh County, West Virginia. During the 12-month period preceding the issuance of the consolidated complaint, the Respondent, in conducting its operations described above, performed services within the State of West Virginia valued in excess of $50,000 for Mid-Atlantic Resources Corporation. Also, during that same period, Mid-Atlantic Resources Corportaion, with an office and principal place of business at Beckley, West Virginia, has been engaged in the mining and sale of coal and sold and shipped goods valued in excess of $50,000 directly from its West Virginia locations to points outside the State of West Virginia.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Local 6105 and the International Union are labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent (the unit) constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees of [Respondent] engaged in the production of coal, including removal of overburden and coal waste, preparation, processing, and cleaning of coal, repair and maintenance work normally performed at the mine site and maintenance of gob piles excluding all professional employees, guards and supervisors as defined in the Act.

Since about January 9, 1997, and at all material times, the International Union has been the designated exclusive collective-bargaining representative of the unit and since that date has been recognized as such representative by the Respondent. This recognition has been embodied in a collective-bargaining agreement between the Respondent and the International Union which is effective from February 1, 1997, to January 31, 2002.

At all material times since about January 9, 1997, based on Section 9(a) of the Act, the International Union has been the exclusive collective-bargaining representative of the unit.

Since about March 1998, the Respondent has failed to continue in full force and effect all the terms and conditions of the agreement described above by failing to provide health insurance benefits pursuant to article XVII(a) of the agreement; failing to provide 401(k) plan pension benefits in accordance with article XVII(c) of the agreement; and failing to withhold selective strike assessments from employees' pay and remit such withholdings to the

International Union in accordance with article XIII of the agreement.

Although the terms and conditions of employment described above are mandatory subjects for the purpose of collective bargaining, the Respondent has engaged in the conduct described above without the International Union's consent.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1), (5), and (d) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing since March 1998 to continue in full force and effect the terms and conditions of the 1997–2002 agreement, by failing to provide health insurance benefits and 401(k) plan pension benefits pursuant to articles XVII(a) and XVII(c) of the agreement, we shall order the Respondent to comply with the terms and conditions of the 1997–2002 agreement, and to make whole its unit employees by providing all contractually required health insurance benefits and by making 401(k) plan pension benefits payments or contributions, including any additional amounts applicable to such delinquent payments as determined pursuant to *Merryweather Optical Co.*, 240 NLRB 1213, 1216 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make such required payments or contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2. (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 632 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[1]

Furthermore, having found that the Respondent violated Section 8(a)(5) and (1) by failing since March 1998, to withhold selective strike assessments from employees' pay and remit such withholdings to the Union in accordance with article XIII of the 1997–2002 agreement, we shall order the Respondent to withhold the assessments and remit such withholdings to the Union as required by the 1997–2002 agreement, and to reimburse the Union for its failure to do so, with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Mate Creek Loading, Inc., Raleigh County, West Virginia, its officers, agents, successors, and assigns, shall

1.Cease and desist from

(a) Failing to bargain with the International Union, United Mine Workers of America, AFL–CIO as the exclusive representative of the employees in the appropriate unit set forth below, by failing and refusing to continue in full force and effect the terms and conditions of the 1997–2002 agreement by failing to provide health insurance benefits and 401(k) plan pension benefits payments or contributions and failing to withhold selective strike assessments from the pay of employees who have authorized withholding and remit such withholdings to the Union pursuant to articles XVII(c), XVII(a), and XIII of the agreement. The unit is:

> All employees of [Respondent] engaged in the production of coal, including removal of overburden and coal waste, preparation, processing, and cleaning of coal, repair and maintenance work normally performed at the mine site and maintenance of gob piles excluding all professional employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Comply with the terms and conditions of the 1997–2002 agreement by providing all contractually required health insurance benefits and by making 401(k) plan pension benefits payments or contributions retroactive to March 1998, and make whole the unit employees for any loss of benefits or expenses ensuing from its failure, since March 1998, to provide these benefits pursuant to articles XVII(c) and XVII(a) of the agreement, with interest, as set forth in the remedy section of this decision.

(b) Withhold and remit authorized union selective strike assessments from employees' pay as required by the 1997–2002 agreement since March 1998, and reimburse the Union for its failure to do so, with interest, in the manner set forth in the remedy section of this decision.

[1] To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the employer's delinquent contributions during the period of the delinquency, the respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the respondent otherwise owes the fund.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility in Raleigh County, West Virginia, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 1998.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 31, 1999

John C. Truesdale	Chairman
Peter J. Hurtgen,	Member
J. Robert Brame III,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to bargain with the International Union, United Mine Workers of America, AFL–CIO as the exclusive representative of the employees in the appropriate unit set forth below, by failing and refusing to continue in full force and effect the terms and conditions of the 1997–2002 agreement by failing to provide health insurance benefits and 401(k) plan pension benefits payments or contributions and failing to withhold selective strike assessments from the pay of employees who have authorized withholding and remit such withholdings to the Union pursuant to articles XVII(c), XVII(a), and XIII of the agreement. The unit is:

> All employees of [us] engaged in the production of coal, including removal of overburden and coal waste, preparation, processing, and cleaning of coal, repair and maintenance work normally performed at the mine site and maintenance of gob piles excluding all professional employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL comply with the terms and conditions of the 1997–2002 agreement by providing all contractually required health insurance benefits and by making 401(k) plan pension benefits payments or contributions retroactive to March 1998, and WE WILL make whole the unit employees for any loss of benefits or expenses ensuing from our failure, since March 1998, to provide these benefits pursuant to articles XVII(c) and XVII(a) of the 1997–2002 agreement, with interest.

WE WILL withhold and remit authorized union selective strike assessments from employees' pay as required by the 1997–2002 agreement since March 1998 and reimburse the Union for our failure to do so, with interest.

MATE CREEK LOADING, INC.